

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

DANELL MARCUS MCALISTER,  
*Petitioner.*

No. 2 CA-CR 2019-0292-PR  
Filed June 23, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR035163  
The Honorable Renee T. Bennett, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Danell McAlister, Florence  
*In Propria Persona*

STATE v. MCALISTER  
Decision of the Court

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

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V Á S Q U E Z, Chief Judge:

¶1 Danell McAlister seeks review of the trial court’s ruling summarily dismissing his successive and untimely petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). McAlister has not shown such abuse here.

¶2 McAlister was convicted in 1992 of three counts of sexual conduct with a minor under fifteen and one count of sexual conduct with a minor under eighteen. The trial court sentenced him to an aggregate prison term of eighty-six years. We affirmed his convictions and sentences on appeal. *State v. McAlister*, No. 2 CA-CR 92-0878 (Ariz. App. Sept. 6, 1994) (mem. decision). He has repeatedly sought and been denied post-conviction relief, and has filed five previous petitions for review, all of which this court has denied. *State v. McAlister*, No. 2 CA-CR 2013-0240-PR (Ariz. App. Oct. 31, 2013) (mem. decision); *State v. McAlister*, No. 2 CA-CR 2010-0408-PR (Ariz. App. Mar. 24, 2011) (mem. decision); *State v. McAlister*, No. 2 CA-CR 2009-0054-PR (Ariz. App. June 25, 2009) (mem. decision); *State v. McAlister*, No. 2 CA-CR 2006-0159-PR (Ariz. App. Jan. 26, 2007) (mem. decision); *State v. McAlister*, No. 2 CA-CR 95-0007-PR (Ariz. App. May 31, 1995) (mem. decision).

¶3 In October 2017, McAlister filed another notice of and petition for post-conviction relief, which the trial court summarily dismissed. The court denied his subsequent motion for reconsideration. Shortly thereafter,

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

STATE v. MCALISTER  
Decision of the Court

McAlister filed an “[a]mended” Rule 32 petition. The court denied McAlister’s request to amend and summarily dismissed the petition. About four months later, McAlister filed a second “[a]mend[ed]” petition arguing his grand jury proceeding was defective and he was instead entitled to a preliminary hearing. The court again denied the request to amend and dismissed the petition, noting McAlister’s claim could not be raised in an untimely proceeding. This petition for review followed.

¶4 On review, McAlister repeats his grand-jury claim. McAlister does not address the trial court’s basis for summarily dismissing his petition and, as the court recognized, the time to raise this claim has long since passed. *See* Ariz. R. Crim. P. 32.4(b)(3)(A). The court did not err in summarily dismissing McAlister’s latest petition.

¶5 We grant review but deny relief.